



the work and family legal center

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April 10, 2013

U.S. House Committee on Education and the Workforce  
Subcommittee on Workforce Protections  
2181 Rayburn House Office Building  
Washington, D.C. 20515

Re: Letter in Opposition to the Working Families Flexibility Act of 2013

Dear Chairman Walberg,

We write to express our opposition to the Working Families Flexibility Act of 2013 (WFFA) and explain why we believe this legislation, far from helping working families, would actually leave workers with less time, less money, and less flexibility to care for their families.

A Better Balance: The Work and Family Legal Center is a non-profit legal advocacy organization dedicated to empowering individuals to meet the conflicting demands of work and family without sacrificing their economic security. We believe that workers should not have to face impossible choices between earning a paycheck and caring for themselves or their loved ones. The founders of A Better Balance are a group of lawyers who have successfully worked together on a variety of women's rights and economic issues. We employ a range of legal strategies to promote flexible workplace policies, end discrimination against caregivers, and value the work of caring for families.

A Better Balance is strongly opposed to the WFFA as it would only hurt families who are most in need of better workplace policies. The media is quick to pick up on the struggles that working professionals face in finding work-life balance. But the proposed legislation does not apply to most of these employees. Instead, the WFFA targets those who are eligible for overtime—workers who are paid hourly and are overwhelmingly low-income. The proposed legislation would not give these workers the help they need; instead, it would give their employers a way to deny them the overtime pay they have earned.

The WFFA allows employers to offer compensatory time instead of time-and-a-half pay to hourly, non-supervisory workers who work over 40 hours in a week, allowing workers to bank up to 160 hours. It provides that employers can unilaterally decide to pay employees for compensatory time banked over 80 hours, and allows employees to request their banked compensatory time be paid out in cash but gives employers up to 30 days to comply. It also gives a worker a right to sue if intimidated, threatened or coerced with respect to a compensatory time agreement.

There are numerous problems with the proposed WFFA. For workers with families, working overtime is often a hardship in and of itself. The main reason most workers endure the extra



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hours of overtime is that they receive extra pay that they desperately need. The structure of this bill, as well as power imbalances between employers and low-income workers, is likely to result in workers who need extra money from overtime pay to meet their families' basic needs being forced to work more overtime hours, as overtime will become cheaper for employers who no longer have to pay time-and-a-half, while being persuaded to forego the extra pay. While the bill does provide workers the right to sue in court if intimidated, threatened, or coerced, most low-income workers cannot endure costly litigation or risk losing their job to vindicate their rights in this way.

The name of the act is something of a misnomer for workers. The only real "flexibility" given is to employers to determine whether to offer compensatory time in lieu of overtime pay and when and whether to allow workers to use the compensatory time earned. Because employers have the ultimate authority to decide whether and when to approve an employee's request for compensatory time -- the bill allows employers to deny requests that will "unduly disrupt" the employer's business -- there is no guarantee that foregoing desperately needed compensation will enable a worker to use compensatory time when it is actually needed for family care. In our Families at Work Legal Clinic we often hear from low-income women who are counting on each hour of pay earned to support their families and afford necessities such as food and rent, and agreements such as this would deprive them of the money they desperately need. A Better Balance believes that working parents should not have to choose between their wages and the flexibility they need to care for their children and families.

We support policies and legislation that will bring real change to low-income families, such as paid sick leave and legislation to ensure equal pay. Legislation that families truly need to balance the demands of work and family include such common-sense legislation as the Healthy Families Act (H.R. 1286/S. 631), which would allow workers to accrue up to seven paid sick days to care for themselves or a family member and expansions of the Family and Medical Leave Act such as extending job protection to more workers, extending leave to be used to care for family members such as grandparents, grandchildren, siblings, in-laws and domestic partners, and including time that parents can use to meet with a child's teacher or school administrator. Other needed reforms include national paid family and medical leave insurance and fair scheduling practices policies, as well as wage legislation like the Fair Minimum Wage Act (H.R. 1010/S. 5460) and the Paycheck Fairness Act (H.R. 377/S. 460). Such policies provide real flexibility and options for families.

Given the hardships workers who would be impacted by this legislation already face, we strongly oppose the Working Families Flexibility Act of 2013 and instead urge Congress to focus on passing legislation that will have a truly positive impact on workers and families.

Sincerely,

Dina Bakst  
Co-Founder & Co-President

Sherry Leiwant  
Co-Founder & Co-President